

Hon. Robert H. Whaley

LISH WHITSON PLLC
800 Fifth Avenue, Suite 4000
Seattle, WA 98104
(206) 892-2164

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

OSCAR J. BROWNFIELD

No. CV-08-3005-RHW

Plaintiff,

**PLAINTIFF'S CROSS-
DESIGNATION OF
DEPOSITION TESTIMONY AND
OBJECTIONS TO
DEFENDANT'S DESIGNATION
OF DEPOSITION TESTIMONY**

CITY OF YAKIMA, a Municipal Corporation,

Defendant.

Plaintiff, by and through his attorneys of record, designates/cross-designates the following deposition testimony and objects to the following testimony designated by the defendant:

PLAINTIFF'S DESIGNATIONS	Beginning Page: Line	Ending Page: Line
RE: DEPONENT Norman Mar, Ph.D		
2009		
	6:14	9:20
	10:19	10:24
	12:21	13:16
	14:4	14:14
	15:24	16:2
	16:24	18:14
	35:14	36:14
	49:23	61:21
	62:4	62:11
	64:9	64:15
OBJECTIONS TO DEFENDANT'S DESIGNATIONS	Beginning Page: Line	Ending Page: Line
Plaintiff renews objections made on the record. Plaintiff objects to the form of the question, it mischaracterizes	30:13	31:6

PLAINTIFF'S CROSS-DESIGNATION OF
DEPOSITION TESTIMONY AND OBJECTIONS
TO DEFENDANT'S DESIGNATION OF
DEPOSITION TESTIMONY - Page 2 of 7

1	testimony.		
2	Plaintiff renews objections made on the record. Plaintiff objects to the form of the question, it states facts that are not in evidence. Plaintiff also asserts an objection to foundation.	45:19	47:9

10	PLAINTIFF'S	Beginning	Ending
11	DESIGNATIONS	Page: Line	Page: Line
12	RE: DEPONENT		
13	Richard Drew Ph.D		
14	February 20, 2009		
15		4:21	4:25
16		15:23	16:24
17		17:5	17:11
18		19:2	20:12
19		24:8	26:11
20		51:7	53:17
21		57:2	60:4

PLAINTIFF'S CROSS-DESIGNATION OF
DEPOSITON TESTIMONY AND OBJECTIONS
TO DEFENDANT'S DESIGNATION OF
DEPOSITION TESTIMONY - Page 3 of 7

1	OBJECTIONS TO DEFENDANT'S DESIGNATIONS	Beginning Page: Line	Ending Page: Line
2	Lacks foundation and assumes facts not in evidence.	9:19	9:24
3	Lacks foundation and assumes facts not in evidence.	33:3	33:9
4	Lacks foundation and assumes facts not in evidence.	35:6	35:10
5	Lacks foundation and assumes facts not in evidence.	41:19	43:3
6	Lacks foundation and assumes facts not in evidence.	44:10	44:20
7	Lacks foundation and assumes facts not in evidence.	44:21	45:20
8	Lacks foundation and assumes facts not in evidence.	50:1	51:1

1	PLAINTIFF'S		
2	DESIGNATIONS	Beginning	Ending
3	RE: DEPONENT	Page: Line	Page: Line
4	Robert Newell Ph.D		
5	March 20, 2009		
6		9:1	9:16
7		12:8	17:19
8		25:10	25:15
9		29:3	31:11
10		32:7	33:22
11	OBJECTIONS	Beginning	Ending
12	TO DEFENDANT'S	Page: Line	Page: Line
13	DESIGNATIONS		
14	Plaintiff objects to the form of the question as an imprecise and incorrect hypothetical. Plaintiff objects, question asked and answered. Plaintiff moves to strike.	39:3	41:1
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1	PLAINTIFF	
2	OBJECTS	
3	TO ANY AND ALL	
4	DEPOSITION	
5	TESTIMONY OF	
6	Kathleen Decker, M.D.	
7	The Defendant has	
8	failed to arrange a	
9	timely continuation of	
10	Dr. Decker's deposition.	
11	Plaintiff moves to strike	
12	any testimony of Dr.	
13	Decker in pleadings in	
14	support of Defendant's	
15	motion for summary	
16	judgment and at trial.	

Dated this 4th day of May, 2009.

By: s/ Lish Whitson
Lish Whitson, WSBA #5400

1
2 CERTIFICATE OF SERVICE
3
4

5 I hereby certify that I electronically filed the foregoing with the Clerk of
6 the Court using the CM/ECF System which will send notification of such filing
7 to the following:

8 Jerry J. Moberg
9 jjmoberg@canfield-associates.com

10 Robert C. Tenney
11 tenney@mftlaw.com

12 Dated this 4th day of May, 2009 at Seattle, WA.

13 By: s/ Kristy L. Stell
14 Kristy L. Stell, WSBA #39986

BROWNFIELD v. CITY OF YAKIMA

NORMAN MAR, 3/25/2009

Page 29

Page 30

1 aware of that?

2 A. I don't know if I was specifically aware of that,
3 no.

4 Q. But you were aware that he, in fact, did not get
5 treatment after January of 2001 for these emotional
6 problems?

7 A. Yes.

8 Q. And as I understand what you're saying in your
9 report, his failure to get treatment for these
10 emotional issues after his closed head injury
11 exacerbated or compounded his situation in August of
12 2006; is that true?

13 A. Yes.

14 Q. And you make a reference here, you say that "They
15 have been compounded by his inattention to possible
16 treatment options, as well as his persistently
17 stubborn denial of such consequences."

18 What did you mean by that? Persistently
19 stubborn denial of such consequences?

20 A. In my contact with Mr. Brownfield, he was very
21 consistent and very adamant about denying that his
22 emotional state would affect his functioning as a
23 police officer.

24 Q. I see. And was that stubborn denial or denial
25 clinically significant to you? I guess what I'm

1 trying to get at was that a function of his
2 psychological problems or was that just a refusal to
3 comply with -- with the doctor's orders, you see
4 what I'm saying?

5 A. I think it's part of it is his refusal to comply.

6 Which gets at his independence --

7 Q. I see.

8 A. -- and how strongly independent he is. And it also
9 gets to what I refer to in terms of his
10 inflexibility in wanting to see things the way that
11 he sees things and being resistant to suggestions
12 from other people.

13 Q. On the next page, third page of the report, in the

14 second to the last paragraph you say, "It is likely
15 given Officer Brownfield's current high level of
16 motivation for treatment, and given a very intensive
17 and aggressive course of treatment, that he will be
18 able to return to his full range of duties in about
19 three months."

20 Now, as I understand what you're saying is
21 that as of August 3rd, 2006 it was your opinion that
22 Mr. Brownfield was psychologically unfit for duty.
23 But that with an intensive course of treatment you
24 had hoped that he would become fit for duty, is that
25 basically what you're saying?

15 (Pages 29 to 30)

CHATTERTON COURT REPORTING
509-765-6999

BROWNFIELD v. CITY OF YAKIMA

NORMAN MAR, 3/25/2009

Page 31

Page 32

1 A. Yes.

2 MR. BERGMANN: Object to the form of the
3 question, it mischaracterizes his testimony as
4 hopeful whether he states he will be able to return
5 to his former police duties in about three months.

6 Q. (By Mr. Moberg) Well, let's follow up on that.

7 As of August 3rd, 2006 was it your opinion
8 that if he went through a course of treatment he
9 certainly would then immediately following that
10 treatment be fit for duty?

11 A. Given a successful course of therapy and aggressive
12 treatment, yes.

13 Q. But that depended upon him following through with a
14 successful aggressive course of therapy?

15 A. Yes.

16 Q. And if he didn't follow through with a successful
17 course of aggressive therapy, then the contrary
18 would likely be true, that is, is he likely would
19 still remain unfit for duty?

20 A. Absent any change in his behavior. Absent a course
21 of treatment leading to a change in his attitudes
22 and behaviors, I don't believe he would be fit to
23 return to duty.

24 Q. And you weren't predicting the course -- let me
25 rephrase it.

1 A. Well, let's put it, let me put it this way, rather

2 than saying, in judging whether he is fit to return
3 to duty, ultimately that's the call of the Yakima
4 Police Department in terms of their needs for
5 individual officers.

6 But absent the aggressive course of treatment
7 or successful course of treatment, Mr. Brownfield
8 will continue -- would have continued to exhibit the
9 same kinds of behaviors and flaws in judgment that
10 are likely to interfere with Mr. Brownfield's
11 functioning as a police officer.

12 Q. And did you understand when Mr. Cline contacted you
13 that ultimately he wanted you to express an opinion
14 as to whether or not Mr. Brownfield was fit for
15 duty?

16 A. Would you say that again?

17 Q. Yes. Did you understand in your commission with Mr.
18 Cline when he hired you, that your task was to
19 determine whether Mr. Brownfield was fit for duty or
20 not?

21 A. Initially, my understanding was that Mr. Cline
22 wanted me to review the reports and the conclusions
23 contained in Dr. Decker's evaluation.

24 Q. Uh-huh.

25 A. And give my opinion about her opinion.

16 (Pages 31 to 32)

CHATTERTON COURT REPORTING
509-765-6999

BROWNFIELD v. CITY OF YAKIMA

NORMAN MAR, 3/25/2009

Page 45

Page 46

1 psychological services section. That is not true.
 2 I don't know what the context of that contact has
 3 been.

4 Q. Okay.

5 A. Officer Brownfield has gotten an idea in his head
 6 that there are erroneous facts and these facts are
 7 what led -- these individual facts are what led to
 8 the conclusions in Dr. Decker's report and in my
 9 report. That's just not true.

10 Q. Okay. And it is clinically significant because of
 11 someone's personality problems that even when he is
 12 told that's not true, he continues doggedly to
 13 pursue it as if it is true?

14 A. Yes.

15 Q. That was one of the personality issues that you
 16 noted in your evaluation and Dr. Decker noted in
 17 hers?

18 A. It's what I noted in my evaluation.

19 Q. Okay. Were you aware that he rather doggedly and
 20 persistently stalked Dr. Decker after her reports to
 21 the point where she became concerned about her
 22 personal safety?

23 A. No.

24 MR. BERGMANN: Object to the form of the
 25 question as stating facts that are not in evidence.

1 Q. (By Mr. Moberg) Let me ask you to assume for the
 2 sake of this question that after Dr. Decker's
 3 reports and after you issued your reports, Mr.
 4 Brownfield investigated Dr. Decker, including
 5 contacting a police commander in Phoenix talking to
 6 him over 30 minutes about Dr. Decker about
 7 Mr. Brownfield's views that Dr. Decker was a, quote,
 8 "hatchet man," closed quote.

9 That he wanted to know where Dr. Decker was
 10 living, she had left Seattle. And that he then
 11 proceeded to track down Dr. Decker and write her
 12 E-mails accusing her of inaccurate reporting, and
 13 threatening her with lawsuits. And that the police
 14 commander was sufficiently concerned in his
 15 conversation with Mr. Brownfield that he called
 16 Dr. Decker and advised her that she should be
 17 concerned about her safety.

18 Would those kinds of reactions on Mr.
 19 Brownfield be consistent with the problems you were
 20 seeing in August of 2006, which led to your
 21 conclusion at that point that he was not fit for
 22 duty?

23 MR. BERGMANN: Let me interpose an
 24 objection as to the foundation. And the accuracy of
 25 the statements made to the Phoenix police officer.

23 (Pages 45 to 46)

CHATTERTON COURT REPORTING
509-765-6999

Page 47

Page 48

1 Q. (By Mr. Moberg) Okay. You can still answer the
 2 question.

3 A. The -- it's not behavior that I would have predicted
 4 or foreseen from where he was in terms of my eval --
 5 my letter of August, 2006. But there -- are there
 6 elements that are consistent with the kind of
 7 personality that I saw in my evaluation of Mr.
 8 Brownfield? Yes.

9 Q. Did you get the sense in the Exhibit 125 that he was
 10 either expressly or impliedly threatening to take
 11 action against you because of your report?

12 A. I got the impression that yes, that he might also
 13 want to file a complaint against me in some way.

14 Q. Okay. Were you aware at any time that he then did a
 15 rather extensive investigation of your experience
 16 and background?

17 A. Was I aware of that?

18 Q. Yes.

19 A. No.

20 Q. Were you aware that after your reports and after his
 21 course of treatment with Dr. Newell, and at the
 22 conclusion of all of his treatment, Dr. -- Chief
 23 Granato sent him a notice advising him that
 24 basically he had reports that Mr. Brownfield was
 25 unfit for duty and was -- and could be terminated

1 and wanted to set up a pretermination hearing?

2 And that following receiving that notice from
 3 Chief Granato, Jeff Brownfield did an extensive
 4 background investigation into Chief Granato's prior
 5 employment in Kingsville, Texas?

6 A. I was not aware of that.

7 Q. Okay. Assuming that to be true, and assuming that
 8 the investigation included contacting a number of,
 9 two or three people who were detractors from Chief
 10 Granato, and he even got on a blogging website and
 11 tried to seek information of a negative nature of
 12 Chief Granato when he was employed at Kingsville,
 13 would those kind of behaviors be clinically
 14 significant to you in your feeling about Mr.
 15 Brownfield's psychological fitness for duty?

16 A. That kind of behavior would cause me concern about
 17 any person.

18 Q. Why?

19 A. It seems overdetermined. And intrusive.

20 Q. Would it --

21 A. I'm not sure what you are asking.

22 Q. Well, would it cause you concern about his -- would
 23 it cause you any concern about whether or not Mr.
 24 Brownfield had made the progress you had hoped for
 25 in psychological treatment if his behaviors after

24 (Pages 47 to 48)

CHATTERTON COURT REPORTING
 509-765-6999

Page 9

1 diagnose and treat conditions which might outwardly
2 show in some kind of psychological manifestation but
3 have some brain related or organic cause or source;
4 is that fair to say?

5 A. You're saying that you would treat people that
6 wouldn't necessarily show brain impairment?

7 Q. No, no, actually I'm trying to express, let me see
8 if I can retry that.

9 A. Okay.

10 Q. Because I'm trying to get an idea of the difference
11 between somebody who's a psychologist and somebody
12 who's a neuropsychologist.

13 Do I understand that in the specialty of
14 neuropsychology you're specially trained to relate
15 psychological behaviors or misbehaviors to organic
16 brain functions or dysfunctions?

17 A. You're trained to relate behavior to brain function,
18 yes.

19 Q. Whereas somebody just trained in psychology while
20 they may see, observe and treat the psychological
21 manifestation they may not have the discipline or
22 training to relate that back to an organic brain
23 injury or a brain dysfunction?

24 A. That's correct.

25 Q. All right. You provided me three files to look at,

Page 33

1 some therapy regarding head injury. He didn't want
2 to do it. He just wanted to go back to work.

3 Q. Okay. And when you're talking to him about the
4 emotional sequela, this is the same concerns you had
5 in your first visit that there would be some
6 emotional problems that would likely show up as a
7 result of the particular head injury he had in his
8 later life?

9 A. That's correct.

10 Q. All right. And apparently you said that he didn't
11 want to have anything to do with it. Did he say he
12 was not going to follow that recommendation, wasn't
13 going to get psychological help?

14 A. I think he said he would not follow up, that he
15 wanted to go to work.

16 Q. All right. Let me ask you two other questions then.

17 At that point then, having completed this
18 evaluation, what functional issues would you expect
19 he would have based on the visual problems that you
20 had, visual-spatial problems that you had diagnosed?

21 A. I don't know if I'd say I would expect him to have,
22 I'll tell you what my concerns were.

23 Q. What were your concerns?

24 A. That he might miss visual detail in a situation.
25 Say he's in a situation with cars and people and

Page 35

1 problems were. And he had accepted them. And so he
2 knew about them. This was not a brain impairment
3 that prevented him from -- from understanding his
4 deficits. He simply wasn't aware of them until he
5 was taught and then he did learn and adapt.

6 Q. And would you be concerned that he might have some
7 level of denial about those limitations and
8 therefore, not seek appropriate treatment or report
9 appropriate concern?

10 A. That's what I felt was going on.

11 Q. Okay. Did you provide any treatment for him after
12 that evaluation? And before we go there let me ask
13 you one other question I neglected to ask.

14 At the end of that evaluation, you recommended
15 to him that he have some course of psychological
16 treatment; is that correct?

17 A. That's correct.

18 Q. Which he rejected and said he wasn't interested in,
19 correct?

20 A. Correct.

21 Q. Did you recommend any other form or course of
22 treatment for him at that time?

23 A. Yes. I recommended a more complete visual
24 evaluation.

25 Q. Okay.

Page 41

1 things and ways to adjust to them. I think -- a big
2 part of my job at this stage is education so they
3 understand what's going on and what's the reasons
4 for these things. Some of the things that trigger
5 the frustration and impatience and, you know, those
6 kinds of things. So there was a lot of that went
7 on, I'm sure.

8 But it's just a teaching process.

9 Q. Now, he had reported to you that he had what
10 appeared to me sort of passive moments and then he
11 would be given to angry outbursts.

12 Is that reported to you -- first of all, is
13 that accurate, is that what he reported to you?

14 A. Yes.

15 Q. Is that something that you would reasonably
16 associate with the emotional fallout from the kind
17 of brain injury that he suffered?

18 A. Yes.

19 Q. All right. And how do you treat that passivity and
20 then angry outbursts from a psychological
21 standpoint?

22 A. Well, a lot of ways depending on the circumstances.
23 One of the things that happens fairly consistently
24 with head injured people that don't get treatment,
25 is that their self-confidence just goes all to pot.

Page 42

1 Because they're making mistakes they don't know
2 they're going to make, they don't anticipate them
3 and they keep making them over and over again. They
4 aren't capable of doing all the things they were
5 before, they're generally very frustrated and I
6 think probably the basic emotion is that they're
7 scared. When your brain doesn't do what you expect
8 it to, it's pretty scary.

9 We talk about the source of the problem, we
10 usually talk about, okay, what things are you
11 comfortable sharing and doing together, what things
12 can he pick up and that sort of thing. But we talk
13 a lot about how to avoid problem areas. Fatigue is
14 one of the problem areas. Being overwhelmed by
15 stimulus, you know, the dog barking and the kids
16 running around and your wife arguing with you at the
17 same, it isn't going to work.

18 So there's certain things that you can do and
19 be aware of to try and reduce the incidence of the
20 frustration. But lack of confidence was something
21 that he really identified with, I remember that.
22 And she did, too. And he is in my opinion at that
23 point he's such a competitive person that he
24 didn't -- he didn't want to give up anything. And
25 part of his big measure of himself is his physical

BROWNFIELD v. CITY OF YAKIMA

RICHARD DREW, 4/20/2009

Page 43

1 abilities, which he was very focused on and those
2 were compromised because of his left side weakness
3 and so forth. So he was having a really tough time.

4 Q. How about in areas of judgment? Would you expect --
5 did you either observe or expect that he would be
6 suffering from any limitations in exercising good
7 judgment?

8 A. Judgment's difficult to evaluate unless it's
9 blatantly off. I did not see things that I thought
10 indicated real poor judgment. But I had the reports
11 of him blowing up and pulling his wife's hair. And
12 certainly I'm very concerned about it in his line of
13 work where judgment is so critical.

14 Q. Okay. And did you recommend a further course of
15 treatment to --

16 A. I did.

17 Q. And what was your recommendation?

18 A. That he continue with some individual therapy and
19 therapy with his wife with him. So we could get to
20 the bottom of some of these things and try and make
21 some modifications.

22 Q. At the point you made that recommendation were you
23 able to determine the length and time of the course
24 of this treatment or was it open ended?

25 A. At some point I did do an individual on a time

Page 44

1 frame.

2 Yeah, here it is on the notes from the
3 individual therapy sessions. "He utilizes
4 strategies well and is believed that two to
5 three months program of individual and/or group
6 therapy on a weekly basis would be adequate."

7 Q. Do you know whether or not he followed that
8 recommendation?

9 A. He did not.

10 Q. And these emotional as you call them sequelae and
11 sometimes people get confused with that word and I
12 refer to it as fallout. In other words, the
13 emotional reactions that he's going to have where
14 you might reasonably expect he would have from this
15 brain injury. If they are untreated will they stay
16 the same, get better or get worse?

17 A. As a general thing I think they get worse until the
18 patient gets some insight into them and sometimes
19 they stay worse. Certainly sometimes they get
20 better, too, they learn.

21 Q. Okay. With Mr. Brownfield, after you made this
22 recommendation, would you be surprised to find out
23 that after July 4th of 2000, or July 2nd of 2004,
24 that he continued to have difficulties getting along
25 with his wife, difficulties getting along in work,

Page 45

1 blowing up at supervisors, and expressing issues
2 around frustration, depression and inability to
3 function?

4 MR. BERGMANN: Let me just interpose an
5 objection to the form of the question. Assumes
6 facts not in evidence.

7 Q. (By Mr. Moberg) And the question isn't suggesting
8 that he had all those, but would you expect that
9 those kind -- let me rephrase it.

10 For example, untreated as Mr. Brownfield did
11 not follow your course, would you be surprised to
12 learn that in his work environment he was not
13 getting along with his supervisors, he was blowing
14 up at his supervisors, swearing at them and doing
15 things like that in his work?

16 A. I would not be surprised, but I have to tell you
17 that he called me and told me all of those things
18 were going on.

19 Q. Oh, I see.

20 A. At a later time.

21 Q. Well, when did you see him next then after the last
22 session where you treated him?

23 A. Yeah, I didn't see him. He came into the office, he
24 left a note to me and a -- two evals by Dr. Decker.

25 Q. And when did he deliver that note to you, if you

Page 50

1 Q. His wife had reported on more than one occasion
2 something to the effect that she felt she had lost
3 her husband after the 2000 accident. She indicated
4 that she had noticed increase in his defiance, angry
5 outbursts, impulsivity, those sorts of things, and
6 that was what she was referring to.

7 First of all, when you saw her did she ever
8 make an expression like that to you?

9 A. I don't recall. I hear that very, very often in
10 cases like this. So I don't recall, I didn't make a
11 note of it.

12 Q. What's the significance of that comment by his wife,
13 if any?

14 A. Well, people change when their brain changes. If
15 there's organic impairment there's a change usually,
16 it doesn't always manifest itself in the
17 personality, but it often does. And he reacts to
18 things differently, I think is what she's saying
19 than he used to. She can't count on him being the
20 person he was before. Usually, you have to relearn
21 how to interact with them to be effective and not
22 trigger these things, if that's possible.

23 There's just a whole series of things that
24 happen. But that's the bottom line that I hear
25 many, many times from family members.

Page 51

1 Q. Okay.

2 MR. MOBERG: Thank you. Those are all
3 the questions I have.

4

5 EXAMINATION

6 BY MR. BERGMANN:

7 Q. You only met his wife on the one occasion; is that
8 correct?

9 A. I'm sure I met her at the hospital also.

10 Q. Yeah.

11 A. I only saw her in therapy one occasion.

12 Q. And that was in early 2004? January of 2004, I
13 think?

14 A. I think that's right. Yes.

15 Q. January 21st, right?

16 A. Right.

17 Q. You wouldn't be surprised to find, would you, that
18 in every marriage that ends up in a divorce that
19 there's usually two sides to the story, right?

20 A. That's correct.

21 Q. Would you be surprised to find that Jeff is now
22 happily married?

23 A. I don't know what's going on with Jeff, I haven't --
24 it's been a long time since I've had contact.

25 Q. Okay. I'll ask you to assume that he is happily

BROWNFIELD v. CITY OF YAKIMA

ROBERT NEWELL, 3/20/2009

Page 39

1 A. No, that is the only document authored by Dr. Drew
2 that's contained in my file.

3 Q. All right. Just so I'm clear on this. I want you
4 to assume for the sake of this question that
5 following his December 2000 motor vehicle accident,
6 Mr. Brownfield was treated and assessed in the time
7 frame from December of -- actually, January of '01
8 through July of '01, by Dr. Drew, the
9 neuropsychologist.

10 Dr. Drew expressed -- was of the opinion and
11 expressed to Mr. Brownfield that he believed that as
12 a result of his closed head injury he would have
13 some significant, as he referred to it, emotional
14 sequelae which related to the injury. Which
15 included such things as impulsivity, issues related
16 to getting along with others, and actually some of
17 the issues that he identified in his '04 report.

18 Given your treatment and assessment, are you
19 in a position to quarrel with or disagree with Dr.
20 Drew's assessment in any regard?

21 MR. WHITSON: Objection, imprecise and
22 incorrect hypothetical, move to strike.

23 Q. (By Mr. Moberg) You can still answer.

24 A. The answer is no, my focus was different. First of
25 all, I'm not trained as a neuropsychologist, so

BROWNFIELD v. CITY OF YAKIMA

ROBERT NEWELL, 3/20/2009

Page 40

1 that's outside of the scope of my practice, and I'm
2 not qualified to weigh in on those factors.

3 You know, when a patient brings me
4 information, regardless of the source, I mean,
5 certainly I pay attention to lots of previous
6 psychological evaluations. But an individual
7 psychological functioning is not a static thing
8 necessarily. And, you know, people change over
9 time, they can improve, they can -- they can --
10 what's called decompensate, get worse.

11 So it's Dr. Drew's findings -- well, the only
12 report I reviewed was the 2004 report, weren't --
13 although they would have been something I would have
14 considered, I would have been more focused on what I
15 observed from Mr. Brownfield.

16 Q. And I understand that, I just want to make sure that
17 you're not telling me that you're expressing an
18 opinion as to whether, in fact, his personality
19 issues you treated were or were not causally
20 relating to the motor vehicle accident of 2000; is
21 that a correct statement?

22 MR. WHITSON: Objection, asked and
23 answered.

24 A. Correct, I do not have an opinion as to the extent
25 to which any of Mr. Brownfield's behavior is the

BROWNFIELD v. CITY OF YAKIMA

ROBERT NEWELL, 3/20/2009

Page 41

1 product of a traumatic brain injury.

2 Q. (By Mr. Moberg) All right. Now, I'm going back to
3 Exhibit 103. One of the questions that was asked
4 was -- well, I'm not sure this was in response to a
5 question. But the bottom of page 1 of Exhibit 103,
6 you make the statement, "My evaluation of Mr.
7 Brownfield was not for the purpose of," I think it
8 says, "determining employment suitability or
9 ability."

10 Did I read that correctly at the very bottom?

11 A. Okay. My evaluation of Mr. Brownfield was not for
12 the purpose of determining employment suitability or
13 ability, yes, that's correct.

14 Q. And that's correct. When you were treating him for
15 those conditions, it was not for the purpose of
16 determining whether he was, wasn't or would be
17 suitable to act as a police officer in the future?

18 A. Or any other job.

19 Q. All right.

20 A. That's correct.

21 Q. All right. And in this document, one of the
22 questions asked was whether or not or was asking you
23 to certify that Mr. Brownfield was unable to work
24 without serious risk -- well, let me read it, it
25 says, 5, "I certify that the above individual was